



CITY OF HAYWARD AGENDA REPORT

Meeting Date 10/07/04

Agenda Item 3

To: Planning Commission

From: Tim R. Koonze, Assistant Planner

Subject: Use Permit No. PI-2004-0225 - Antonio Aransamendez (Applicant) / James Tong (Owner) – Request to Allow a Substantial Change In The Mode of Operation By Allowing Ancillary Live Entertainment and Dancing at a Restaurant - Property Is Located at 20500E Hesperian Boulevard in a Neighborhood Commercial (CN) District

RECOMMENDATION:

Staff recommends that the Planning Commission find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Class 1 (A) Existing Facilities, and approve the Use Permit Application subject to the attached findings and conditions of approval.

DISCUSSION:

The proposal is a request to continue to offer entertainment and dancing in conjunction with the Manila Garden Restaurant. The restaurant is located within the Bedford Plaza Shopping Center at the southeast corner of Hesperian Boulevard and West A Street. The restaurant is primarily surrounded by retail and service commercial uses. The primary tenant within the shopping center is a dollar store. The remainder of the center has various small tenants ranging from a donut shop to a fabric store to a Japanese restaurant. La Quinta Inn is located on the west side of Hesperian Boulevard, approximately 200 feet away.

During a routine inspection City police discovered the restaurant was hosting karaoke and dancing without benefit of the proper permits. The owner was instructed to obtain the proper permits from the Planning Department. The karaoke and dancing has continued during the processing of this application. City police have not received any complaints nor observed any problems with the restaurant, its entertainment activities, or the parking. The Police Department is supportive of the operation as long as the conditions of approval are adopted.

The Zoning Ordinance requires a conditional use permit anytime a business that has alcohol sales requests a substantial change in the mode or character of operation. The request to have live entertainment and dancing constitutes a change in the mode or character of the operation.

The restaurant currently operates under a Type 41 Alcohol Beverage Control License which allows the sale of beer and wine; there is no separate bar. The proposed ancillary activities would not change the type of alcohol license. According to the Department of Alcohol Beverage Control, this area is below the concentration allowed for restaurants with permits to sell alcohol. There are no residential structures, churches, schools, public playgrounds, parks, recreational centers or similar uses within 500 feet of the restaurant.

The 2,500 square-foot restaurant contains 1,285 square feet of dining area. Dining hours are Monday through Saturday 11:00 a.m. – 9:00 p.m. and Sunday 11:00 a.m. to 3:00 p.m. Without benefit of the proper use permit the restaurant has been hosting karaoke singing on Thursday nights from 8:30 p.m. – 12:30 a.m. and on Friday and Saturday nights from 9:30 p.m. – 2:00 a.m.

The owner intends to continue karaoke events and provide dancing to both recorded and live music. The applicant proposes to install a 12-foot by 12-foot dance floor. Conditions of approval would permit the music only to be played between 6:00 p.m. and 2:00 a.m. on Thursday, Friday and Saturday nights.

Alcohol sales would end at 1:00 a.m. on Thursday, Friday and Saturday nights. Minors would not be allowed in any portion of the business after 10:00 p.m. Full meals would be made available until 10:00 p.m. and a light menu would be available until closing.

The shopping center parking lot can adequately serve all uses within the center. The addition of the proposed activities would not require the need for additional parking as it operates in conjunction with the restaurant and the dancing and entertainment hours occur during the times the majority of the adjacent shopping center tenants are closed with the exception of a fast food drive-thru restaurant is located directly behind the Manila Gardens building which is open until 12:00 a.m. Fridays and Saturdays.

Environmental Review

It has been determined that this project is categorically exempt from the guidelines of the California Environmental Quality Act, pursuant to Section 15301, Class 1 (A) Existing Facilities.

Public Hearing Notice

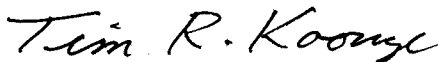
On April 26, 2004 a notice of the application was mailed to every property owner and occupant within 300 feet of the property as noted on the latest assessor's records. Staff received one letter from Mr. John Kyle (copy attached as Exhibit D) objecting to the addition of the nightclub citing concerns about the potential for inappropriate activity and an increase in the demand on police services. A condition requires the restaurant operator to provide a uniformed security guard for every hundred patrons. The Police Department is supportive of the operation as long as the conditions of approval are adopted.

On September 10, 2004, a Notice of Public Hearing was mailed. Another letter was received from Mr. Kyle (copy attached as Exhibit E) suggesting that the modest incomes of nearby residents, compiled with an excess of commercial uses, will result in the inability of the restaurant to succeed, even with the addition of karaoke. Further that the restaurant could deteriorate into the entertainment venue that offers sordid entertainment that attracts "non-dancing" low income groups and will evolve into a social and economic problem.

Conclusion

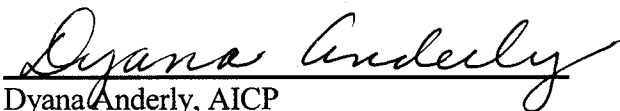
Karaoke has become a popular social activity throughout the area and it is staff's opinion this activity will likely to contribute to the restaurants success while providing another source of entertainment for the Longwood-Winton Grove Neighborhood. According to the Department of Alcohol Beverage Control, this area is below the concentration allowed for restaurants with permits to sell alcohol. The shopping center parking lot is of adequate size to serve all uses within the center. The karaoke and dancing activities have been operating for several months without incident. The Police Department is supportive of the operation as long as the conditions of approval are adopted.

Prepared by:



Tim R. Koonze
Assistant Planner

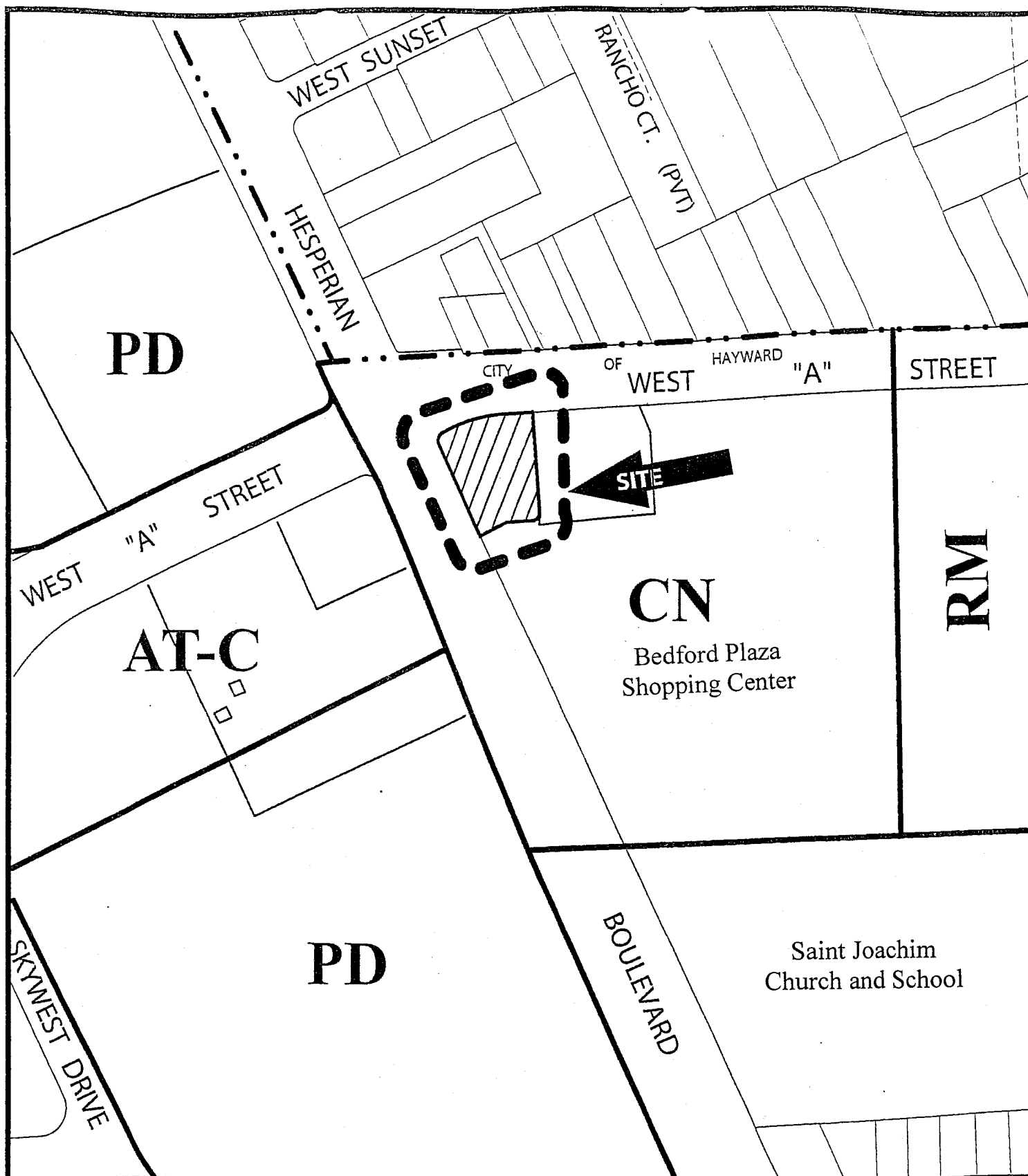
Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
 - B. Findings for Approval
 - C. Conditions of Approval
 - D. Letter of Concern dated April 30, 2004
 - E. Letter of Concern dated September 15, 2004
- Plans



Area & Zoning Map

PL-2004-0225 AUP

Address: 20500 E. Hesperian

Applicant: Antonio Aranzamendez

Owner: Bedford Plaza Associates

AT-C-Air Terminal- Commercial

CN-Neighborhood Commercial

PD-Planned Development

RM-Medium Density Residential RMB 3.5, RMB 4



FINDINGS FOR APPROVAL

Use Permit No. PI-2004-0225 - Antonio Aransamendez (Applicant) / James Tong (Owner)
– Request to Allow a Substantial Change In The Mode of Operation By Allowing Ancillary
Live Entertainment and Dancing at a Restaurant

Property Is Located at 20500E Hesperian Boulevard
in a Neighborhood Commercial(CN) District

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Class 1 (A) Existing Facilities.
- B. The Department of Alcoholic Beverage Control has determined that there is not an undue concentration of establishments dispensing alcoholic beverages in that area.
- C. The proposed ancillary live entertainment and dancing will not detrimentally affect the surrounding neighborhood as the nearest residential structure, church, school, public playground, park, recreational center or similar use is over 500 feet from the restaurant
- D. The proposed use is desirable for the public convenience or welfare in that, with the location within a shopping center that provides easy access and adequate parking, the proposed business would help provide another source of entertainment for the Longwood-Winton Grove Neighborhood and will provide a means for community interaction.
- E. The proposed use will not impair the character and integrity of the zoning district and surrounding area in that the conditions imposed on the operation of the proposed activities will ensure safe and orderly conduct.
- F. The proposed ancillary live entertainment and dancing will not be detrimental to the public health, safety or general welfare as conditions of approval will require the restaurant manager to take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises to the satisfaction of the Planning Director and the Police Chief.
- G. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved. The Retail and Office Commercial General Plan designation and the Neighborhood Commercial zoning district both support restaurants and entertainment venues.
- H. The proposed use is in harmony with the intent and purpose of the neighborhood commercial zoning district in that the zoning allows for this use in this zoning district and it is located within an existing shopping center but operating at a time when most of the surrounding businesses are closed.

CONDITIONS OF APPROVAL

Use Permit No. PL-2004-0225 - Antonio Aransamendez (Applicant) / James Tong (Owner)
– Request to Allow a Substantial Change In The Mode of Operation By Allowing Ancillary
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General:

1. Application No. PL-2004-0225 AUP is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a business license has been issued, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the above date.
2. All improvements indicated on Exhibit "A", are hereby approved and must be installed within 60-days after approval.
3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
4. The establishment shall operate only as a License Type 41 per the State Department of Alcoholic Beverage Control regulations.
5. All signs shall comply with the Sign Ordinance regulations for the Commercial District. Prior to installation of any signs, sign plans and a sign permit application shall be submitted for approval by the Planning Director.
6. A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.
7. Exterior lighting shall be provided for the exterior of the premises, including adjacent public sidewalks and the parking areas under control of licensee(s). The level of lighting shall comply with the City of Hayward Security Ordinance. The lighting shall operate during all hours of darkness during, which the premises are open for business in a manner so persons standing in those areas are identifiable by law enforcement personnel. However, the positioning of such lighting shall not disturb the normal privacy and use of the adjoining properties. The design and location of lighting fixtures shall meet the approval of the Planning Director.
8. No pay phones shall be permitted on the exterior of the building or premises.

Landscape Architect:

9. Replace any missing street trees along the Hesperian Boulevard property frontage. The species and location of the trees shall be approved by the City's Landscape Architect.

Building Department:

10. Prior to issuance of a building permit the plans shall be modified to allow direct access from the dining area to the hallway between the bathrooms and the kitchen.

Fire Department:

11. Post new occupant load signage reflecting the dining and dancing capacities (the dining occupant load is 109 and the dance floor is an additional 20 persons).

Police:

12. The sale, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 a.m. and 1:00am Thursday, Friday and Saturday.
13. At all times when alcoholic beverages are available, food, prepared in the kitchen, must also be available to customers. Full course meals shall be available until 10:00 PM and a light menu shall be available until closing.
14. Minors are not allowed in or on any portion of the business under control of licensee(s) after 10:00 p.m. each day of the week. This includes all areas of the property including the building, patios and parking lots.
15. Music, live or recorded, is permitted only between the hours of 6:00 pm until 2:00 am on Thursday, Friday and Saturday nights. No music or entertainment is allowed Sunday through Wednesday.
16. During all live music and dancing activities the establishment shall provide one uniformed security guard for every 100 patrons. The security guards shall be licensed by the California State Department of Consumer Affairs. This requirement may be increased or decreased at the discretion of the Chief of Police.
17. The sale of alcoholic beverages for consumption OFF the premises is strictly prohibited.
18. Consumption of alcoholic beverages outside of the main building is strictly prohibited.
19. Licensee(s) shall post and maintain on the premises and in the parking lot used in conjunction therewith notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the licensee(s) and parking lot to persons on the public sidewalk stating in 2 inch block lettering the following:

**NO LOITERING IS ALLOWED ON OR IN FRONT OF
THESE PREMISES**

20. Licensee(s) shall post and maintain on the premises and in the parking lot used in conjunction therewith notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the licensee(s) and parking lot to persons on the public sidewalk stating in 2 inch block lettering the following:

**NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE
ALLOWED ON THESE PREMISES**

21. The licensee(s) shall be responsible for removing graffiti from the premises under the control of the licensee(s) within 72 hours of application. If the graffiti occurs on a Friday, weekend day or holiday, the licensee shall remove the graffiti 72 hours following the beginning of the next weekday.
22. The licensee(s) shall be responsible for maintaining the area adjacent to the premises, over which they have control, free of litter.
23. The front door(s) shall be kept closed at all times during the operation of the premises except in the cases of emergency and to permit deliveries. Said door(s) not to consist solely of a screen or ventilated security door.
24. The owner of the establishment shall be responsible for the hiring of entertainers. The live music entertainment shall not be rented to an outside independent promoter.
25. Noise generated by the establishment or its patrons shall not exceed ambient noise levels beyond the project site.
26. The manager shall take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises to the satisfaction of the Planning Director and the Police Chief, which may include the hiring of additional security guards.
27. There shall be no adult entertainment as defined by Zoning Ordinance Section 10-1.2735 (a). In addition, there shall be no fashion shows unless authorized by the Chief of Police and the Planning Director.

Revocation:

28. Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) such criminal offense is found to be detrimental to the public health, safety, or general welfare shall be independent grounds for revocation of this permit.
29. Violation of any of the above conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.

RECEIVED

MAY 03 2004

PLANNING DIVISION

John W. Kyle

22638 Teakwood Street
Hayward, Ca. 94541
Phone (510) 782-7612

April 30, 2004

Mr. Tim R. Koonze, Assistant Planner
Planning Dept.
City of Hayward
777 'B' St.
Hayward, Ca. 94541

Reference: PL-2004-0225 AUP
Aranzamendez / Bedford Plaza Associates

Dear Mr. Koonze;

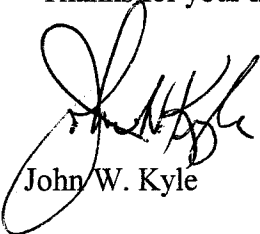
About 200 feet east of Hesperian on the north side of West A Street is a bar once known as the "West 40's Club" at which was frequently held 'wet T shirt night' in addition to the live music of the 'rock & roll' type favored by good old boys and other kinds of red necks. Needless to say there was plenty of sheriff's cars called to the scene on many 'event' nights.

I oppose Manila Garden dancing activity because where you have dancing between 9:00 pm and 2:00 am you are not going to have 'dinner dancing' favored by people of good taste who mix their alcohol with a meal then run home to practice making babies before midnight.

If you look around the area east of Hesperian you are going to find a social set prone to use of stimulants other than alcohol; attendant to that problem are the anticipated increases in numbers of police calls usually occurring in late evenings, especially on Friday and Saturday. Since police department budget constriction imposes staff problems, I don't see why this 'attraction' should be permitted.

I insist that the matter be placed in front of planning commission. The general public and nearby businesses and the Church ought to be given opportunity for public input.

Thanks for your immediate attention..



John W. Kyle

CC: HPD Chief;
Commissioner Bogue
Manager, La Quinta Inn, Hesperian Blvd.

ATTACHMENT D

John W. Kyle

22638 Teakwood Street
Hayward, Ca. 94541
Phone (510) 782-7612

September 15, 2004

City of Hayward, Planning Commission
City Hall
777 'B' Street
Hayward, Ca. 94541

Subject: (AUP) PL-2004-0225
20500-E Hesperian Blvd; A. Aransamendez - Tong et al.

Dear Members of the Commission;

Bedford Plaza originally opened in late 1964 or early 1965. Payless Drug Stores and a small Concord based Super Market Chain were the first tenants. Both failed at this location within three or four years. Property owner leased land space to an Eileen Feather Health Studio, a separate structure now occupied by something else and then later added a "Sub Sandwich Shop" and a Round Table Pizza Restaurant.

The Shell Gas Station closed and was torn down; the present building was erected some years later. Shortly thereafter "Burger King" opened but the Pizza parlor closed and was vacant for a lengthy period; I have not bothered to keep up with present tenancy.

After the closure of Payless Drugs and the Supermarket several other tenancies came and went in those large spaces. It was vacant for quite a while when 'a gym operator' sought memberships in a proposed exercise operation that eventually made headlines in print media with questions about refunds to members of an operation which never opened. Thrift clothing and a \$1.00 store seem, in my aging memory, to have been present at one time or another.

Bedford, once a member of the Board of Directors at Bank of America was later involved with a bankruptcy filing but his fate and whether or not subject property was a consideration, is unknown to me.

The longest tenancy at the property has been that of the self serve laundry due to proximity of high density housing found in nearby residential areas. The second longest tenancies have been those of the Ice Cream Parlor and the donut shop. The Donut shop was a successful business whose customers followed it from it's former location in a large cafeteria style food court operation near or in a portion of what is now the Albertson's Store on Hesperian side of Southland Mall.

Chinese restaurant at the corner of the building in which is located the Manila Gardens is probably well supported by Hotel on the opposite corner. The economic history of the balance of "Bedford Plaza" has been and continues to be a property seriously affected by the lack of sufficient purchasing power (discretionary income) in the combined area of West Hayward and San Lorenzo. This is a factor induced by an over supply of the property type in this section of the county.

ATTACHMENT E

If one believes everything one reads in the ANG newspaper, 'something nice' is about to happen in ~~down-~~ town San Lorenzo. Then, sponsors of the matter before you might easily face greater economic difficulty which, in my opinion, eventuates to violation of any conditions of the use permit.

It is my opinion that the Manila Gardens operator is making a move to bolster economics of a marginal restaurant operation. I do not believe that the introduction of musical entertainment and dancing after regular meal hours will do much to ensure success. Eventually, the same pitfall which befell the famous "West Forties Club" will occur here. West Forties Club was a social problem at which 'wet T shirt nights', rowdy drunkenness and fighting eventuated to multiple calls for presence of Alameda County Sheriff's Dept Officers, with great expense to the county.

The check cashing operation immediately adjacent subject is added evidence of the nature of rental residents in this area. It too is strong evidence of marginal commercial property presence in the area.

This area of Hayward is plagued by low income, high density poorly maintained, low quality housing. The experience at Longwood School should be brought to your attention. Originally intended for 300 students, Longwood student enrollment was approaching 800 in school year 2003-2004. Test scores are low and the history of classroom transience rates is among the highest in HUSD. Upon 'promotion' past 6th grade the students must attend Ochoa Middle School located immediately west of Chabot College or Mt. Eden HS at Hesperian about ¼ mile south of Kaiser Hospital. The mode of transportation favored, even during inclement weather is 'shanks mare' or the bus.

Despite a petition signed by 27 teachers at Longwood School, very short sighted political and administrative leadership failed to install a much needed traffic light at Marin Ave rather than at Longwood Ave with the consequence that, despite the population density considerations of A/C Transit regulations, bus service for those students is now only available along Hesperian at 30 minute intervals. Students must walk in excess of half mile distances to enable crossing over seven lanes of traffic before boarding a bus. **The point being, only the non-discerning, low income groups are found living in this area's high density rental housing stock. The South Garden area residents are the source patrons most likely to be attracted to musical entertainment and dancing at Manila Gardens.**

Please do not grant approval to use of the premises at 20500-E Hesperian for purposes which will evolve into a social/economic problem which this city can ill afford.

As I will be away on vacation at the time of your meeting, I request that this letter be entered into the proceedings for purposes of an appeal to council should you vote to approve the request of Mr. Aransmendez.

Cordially,


John W. Kyle

CC: Hayward City Council

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AVAILABLE
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AND IN THE CITY CLERK'S OFFICE.**